

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

OREGON AMUSEMENTS, LLC, an Oregon
limited liability company,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts corporation,

Defendant.

Case No. 1307-09539

COMPLAINT FOR BREACH OF
INSURANCE CONTRACT AND
DEMAND FOR JURY TRIAL

Prayer: \$69,163.00
(Filing Fee \$505.00 per Or Laws 2012, ch.
48, sec. 2; ORS 21.160(1)(c))

NOT SUBJECT TO MANDATORY
ARBITRATION

COMES NOW plaintiff, and alleges as follows:

1.

At all times material herein, plaintiff Oregon Amusements, LLC was and is an Oregon
limited liability company authorized to do business within the State of Oregon.

2.

At all times material herein, defendant Liberty Mutual Insurance Company was and is a
Massachusetts corporation authorized to do business within the State of Oregon.

3.

At all times material herein, defendant, through its authorized actual or apparent agents,
including Tom Bauer of R. Bauer Insurance, Inc., contracted with plaintiff to provide it with an
appropriate business policy of insurance, which included property theft protection coverage, and

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State of Oregon, County of Marion
I certify that this is a true and correct copy of a
document in the possession of Ken Ammann PC

Dated: 7/21/13 Ken Ammann
Notary Public

JONES AMMANN LLC
ATTORNEYS AT LAW
880 Liberty Street NE - Salem, OR 97301
Phone (503) 364-6734 - Fax (503) 364-6735

My commission expires: 8/23/13

1 defendant accepted premium payments from plaintiff in return for representing that it would
 2 provide such insurance coverage, and defendant represented to plaintiff that it had done so and
 3 that such coverage was in full force and effect on June 9, 2012 under its policy of insurance,
 4 Policy No. BKS 54816782, which defendant chose to underwrite through one of its many
 5 insurance group members, Ohio Security Insurance Company. Defendant directed plaintiff to
 6 make all premium payments for this insurance coverage payable to Liberty Northwest and
 7 plaintiff did so.
 8

9
 10 4.

11 The insurance policy at issue promised to pay plaintiff the replacement cost of business
 12 property in the event of a theft resulting in loss of such property. The policy paid for by plaintiff
 13 represented as follows: "We will pay for loss to covered property from any of the covered causes
 14 of loss." Following that representation, the policy defined "covered property" as "business
 15 personal property you own, including but not limited to equipment, tools, items, or materials to
 16 be installed and office business personal property and business personal property owned by
 17 others including but not limited to employees rented equipment or tools, while they are in your
 18 care, custody or control and for which you have accepted responsibility." The insurance policy
 19 defines a "loss" or event that triggers its obligation to pay as "accidental loss or damage" and the
 20 policy further specifies that a covered cause of loss is "theft or attempted theft." The insurance
 21 policy defines "property damage" as physical injury to property, including all resulting loss of
 22 use of that property. The policy provides that all "loss of use" shall be deemed to occur at the
 23 time of the physical injury that caused it; and further defines property damage as loss of use of
 24 tangible property that is not physically injured. Defendant promised to pay plaintiff if there was a
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1 theft of plaintiff's business personal property located in or on plaintiff's property, or within 100
 2 feet of that property, including all furniture, fixtures, machinery and equipment and any personal
 3 property owned by plaintiff in use in plaintiff's business.

5. 5.

6 Defendant promised to pay plaintiff the value of its property loss due to theft on a
 7 "replacement cost" basis. The insurance policy also promised that this replacement cost
 8 valuation payment would be made "without any deduction for depreciation" of the property.
 9 Defendant's promise to the plaintiff also represented that if repair or replacement with identical
 10 property was not possible, the cost to replace the lost property with similar property capable of
 11 performing the same functions would be the valuation measure it would use to make payment.
 12 Defendant also promised to pay up to \$2,500 to replace or restore lost valuable papers or records
 13 other than electronic data. In this insurance agreement which defendant, or its agents, drafted, an
 14 endorsement termed "Custom Protector Plus Endorsement" was paid for by plaintiff which
 15 further provided for increased insurance coverage limits to be paid by defendant to plaintiff in
 16 the event of a theft of plaintiff's insured property as described on pages 1 & 2 of that particular
 17 endorsement, which are attached, labeled exhibit A, and incorporated herein.

6. 6.

21 On June 9, 2012 a theft occurred of insured property at the location of 7241 Eastwood
 22 Court SE, Turner, OR 97392-5900. This theft was timely reported by plaintiff to law
 23 enforcement authorities on June 9, 2012. Thereafter, this theft was timely reported by plaintiff to
 24 his insurance representatives on June 9, 2012. Plaintiff was asked for information by insurance
 25 representatives at that time and provided all available information. Thereafter, plaintiff
 26 continued to cooperate with all insurance personnel's requests, however invasive and
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1 unreasonable, by providing access to the property, completing requested forms, voluntarily and
2 without benefit of legal representation providing, both formal and informal statements to
3 insurance personnel or their representatives. Despite his timely reporting and cooperation with
4 respect to all the various insurance representatives' requests for documents, personal information
5 and business information, defendant refused to pay plaintiff any amount for any item of loss
6 claimed and has continued to do so, having, as of the date of this complaint, paid nothing to
7 plaintiff. Instead, while refusing to agree to pay plaintiff any amount and refusing to either
8 confirm or deny that any amount would be paid and refusing to state whether the claim was
9 being denied or accepted in whole or part, defendant, through its various agents, effectively has
10 denied the claim through unreasonable delay while refusing to provide any reasonable basis for
11 its continued burdensome invasive and unreasonable requests for additional information from
12 plaintiff. Defendant, on or about August 13, 2012, by letter, demanded that plaintiff appear for
13 what is called a "sworn statement" before an insurance company attorney who is an employee of
14 the insurer, with an insurance adjuster also present, before an official court reporter, causing
15 plaintiff to retain counsel. Plaintiff thereafter provided numerous additional documents,
16 participated in three lengthy formal sworn statements at the demand of defendant on the
17 following dates: October 29, 2012 (5 hrs 20 minutes), January 31, 2013 (2 hrs 40 minutes), and
18 March 11, 2013 (2 hrs). Despite all these actions by plaintiff, defendant still has not paid, or
19 offered to pay, plaintiff any amount for any item or damage claimed, and defendant continues to
20 delay resolution of the claim, and continues to send additional requests for documents via letter
21 of June 14, 2013, which requests are unreasonable. Defendant has yet to state that it is either
22 paying or denying the claim, yet continues to effectively deny the claim by refusing to make any

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Page 4 -COMPLAINT/DEMAND FOR JURY TRIAL

1 payment, and defendant knows, or should know, that its continued delay is financially ruining
 2 plaintiff, and defendant's agents have interfered with plaintiff's business by contacting plaintiff's
 3 customers, causing those customers to question plaintiff's continued operation.
 4

5 7.

6 Plaintiff has complied with the terms and conditions of the insurance policy. Plaintiff has
 7 submitted a proof of loss to defendant more than six months prior to filing this lawsuit. Because
 8 defendant has breached its promise to pay plaintiff for the loss plaintiff suffered within six
 9 months of receipt of proof of loss, plaintiff demands payment of all its attorney fees and costs.
 10

11 8.

12 The agreement drafted by defendant promised that defendant would pay plaintiff
 13 promptly and included within defendant's agreement is an implied duty of good faith and fair
 14 dealing, which applies to all aspects of the contract, including the conduct of defendant's agents,
 15 adjusters, and attorneys, and their manner of investigation and processing of plaintiff's theft loss
 16 claim. Defendant has refused to make any payment to plaintiff despite plaintiff's repeated
 17 demands for payment. Defendant has subjected plaintiff to repeated unreasonable, invasive,
 18 insulting, time consuming, and costly, demands for information, including voluminous
 19 documents, repeated telephone calls and questions, and repeated oral recorded statements
 20 including "statements under oath." Defendant has done so with reckless or intentional disregard
 21 for defendant's contractual obligations to plaintiff. Plaintiff has reason to believe that defendant
 22 has provided sensitive business and/or financial information to third parties without plaintiff's
 23 permission to do so in further breach of defendant's first party contractual express and implied
 24 duties of good faith and fair dealing. Defendant's failure to pay plaintiff is in breach of both the
 25 express terms and the implied duties of good faith and fair dealing within defendant's contract.
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Page 5 - COMPLAINT/DEMAND FOR JURY TRIAL

Defendant's actions as alleged herein, have caused plaintiff continued business income loss, as defendant is reasonably aware, which loss is continuing.

9.

As a result of the theft which occurred on June 9, 2012, plaintiff suffered the loss and loss of use of the following items of property:

<u>Brand</u>	<u>Model</u>	<u>Item</u>	<u>Qty</u>	<u>Age</u>	<u>Replacement Cost</u>
Merit	RX	Countertop Video Game	4	1	\$16,320.00
Buck Hunter	Safari	Computer with Dongle	3	1	\$ 6,000.00
Touchtunes	Maestro	Computer	3	1	\$ 2,127.00
Touchtunes	Maestro	Monitor	3	1	\$ 1,650.00
Touchtunes	Ovation	Monitor	2	1	\$ 1,100.00
Touchtunes	Allegro	Monitor	1	1	\$ 550.00
Touchtunes	Maestro	Hard Drive	3	1	\$ 480.00
Touchtunes	Ovation	Hard Drive	2	1	\$ 320.00
Touchtunes	Allegro	Hard Drive	1	1	\$ 160.00
Incredible Tech	Kit	Upgrade Kit for Buck Hunter World	3	1	\$ 2,250.00
Insignia		42 inch LCD TV	3	1	\$ 1,200.00
		Cigarette cartons	80	0.1	\$ 4,000.00
		Candy (box)	25	0.3	\$ 350.00
		Chips (box)	8	0.1	\$ 160.00
		Large Snacks (box)	12	0.2	\$ 180.00
Craftsman		Precision Tools	3	1	\$ 600.00
Thunder Pro		Speakers	2	1	\$ 400.00
Incredible Tech		Buck Hunter Guns (Video Game)	8	1	\$ 1,280.00
ICT		Bill Validator with Magazine	6	1	\$ 750.00
		Computer Power Supply	6	1	\$ 600.00
Fujitsu	Lifebook	Laptop	1	1	\$ 2,000.00
		Netbook	1	1	\$ 350.00
Jetsort		Coin Counter	1	3	\$ 2,500.00
Jetscan		Currency Counter	1	3	\$ 2,500.00
		Keys	116	1.5	\$ 5,800.00
		External Hard Drive	1	1	\$ 250.00
		Jump Drives	5	1	\$ 100.00
Dewalt		Cordless Drill	2	1	\$ 300.00
Dewalt		Cordless Drill	1	1	\$ 175.00
Dewalt		Cordless Drill	2	2	\$ 300.00

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As a result of defendant's breach of contract in failing to pay plaintiff pursuant to the policy of insurance, plaintiff has suffered past business losses and loss of profits, which damage is continuing given defendant's continued breach of contract. Plaintiff is entitled to an award of economic damages for past and continuing loss of use of the stolen property in an amount to be determined.

As a result of defendant's breach of contract in failing to pay plaintiff pursuant to the policy of the insurance within six months of receipt of proof of loss, plaintiff has incurred and will continue to incur attorney fees and litigation costs and related expenses and is entitled to recovery of those amounts from defendant, pursuant to ORS 742.061(1), in an amount to be determined.

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1 WHEREFORE, plaintiff prays as follows:

2 A. Economic damages for property stolen in the amount of \$69,163.00;

3 B. Economic damages for loss of use of property in an amount to be determined;

4 C. Economic damages for retrieval of important documents in an amount to be
5 determined;

6 D. Attorney fees, costs and disbursements, and any additional relief the court deems
7 appropriate in an amount to be determined.
8

9 DATED this 1st day of July, 2013.
10

11 JONES AMMANN LLC
12

13 *Ken L. Ammann*

14 Ken L. Ammann OSB#88149

15 880 Liberty Street NE

16 Salem, OR 97301

17 (503)364-6734

18 Of Attorneys for Plaintiff

19 Trial Attorney: Ken Ammann, OSB No. 88149
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COMMERCIAL PROPERTY
CP 91 42 11 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CUSTOM PROTECTOR™ PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CAUSES OF LOSS - SPECIAL FORM
WATER EXCLUSION ENDORSEMENT

The following is a summary of increased limits of insurance and additional coverages provided by this endorsement. This endorsement is subject to the provisions of your policy which means that it is subject to all limitations and conditions applicable to this Coverage Part, Coverage Form, Causes of Loss Form or Water Exclusion Endorsement unless specifically deleted, replaced, or modified herein. This endorsement is applicable only to those premises described in the Declarations.

Coverage for loss of Business Income or Extra Expense, whether provided by this endorsement or elsewhere, does not apply if a loss is covered only as a result of this endorsement.

If coverage is provided elsewhere in this policy for the same loss or damage as the coverage provided under this endorsement, the coverage under this endorsement will apply excess over that other coverage unless otherwise stated. We will not pay more than the actual amount of the covered loss or damage.

<u>Coverage Description</u>	<u>Limit of Insurance</u>	<u>Section</u>
Accounts Receivable, Valuable Papers and Electronic Data		
Blanket Limit of Insurance - On Premises	\$ 200,000 Blanket	A.10.
Off Premises:		
Valuable Papers	\$ 10,000	A.10.
Accounts Receivable	\$ 10,000	A.10.
Electronic Data	\$ 10,000	A.10.
Additional Covered Property	Included	A.2.
Appurtenant Structures		
Buildings	\$ 50,000	A.16.u.
Business Personal Property	\$ 5,000	A.16.u.
Back-up of Sewers or Drains	\$ 25,000	F.
Broadened Premises	Included	A.1.
Business Income	\$ 25,000	A.16.s.
Business Income - Newly Acquired Locations	\$ 250,000	A.16.s.
Business Income - Utility Services - Time Element	\$ 25,000	A.16.t.
Business Personal Property - Seasonal Increase	33%	A.16.v.
"Cellular Phones" - Coverage	\$ 1,000	A.16.l.
Computer Equipment	\$ 50,000	A.16.n.
Consequential Loss	Included	A.16.r.
Debris Removal	\$ 25,000	A.6.
Employee Dishonesty	\$ 50,000	A.11.h.
Employee Tools Coverage	\$ 25,000	A.16.w.
Extra Expense	\$ 25,000	A.16.j.
Fine Arts	\$ 25,000	A.16.k.
Fire Department Service Charge	\$ 25,000	A.8.
Fire Protective Devices	\$ 25,000	A.16.l.
Forgery or Alteration	\$ 50,000	A.11.k.
Foundations	Included	A.5.
Inventory and Appraisal Expense Coverage	\$ 10,000	A.11.g.
Lock Replacement	\$ 10,000	A.16.o.

Exhibit A
Page 1 of 2

<u>Coverage Description</u>	<u>Limit of Insurance</u>	<u>Section</u>
Loss of Refrigeration	\$ 25,000	A.16.m.
Lost Key Coverage	\$ 10,000	A.11.j.
Money and Securities		
Inside the Premises	\$ 25,000	A.16.p.
Outside the Premises	\$ 25,000	A.16.p.
Money Orders and Counterfeit Money	\$ 25,000	A.11.i.
Newly Acquired or Constructed Property	180 days	A.12.
Buildings	\$ 1,000,000	A.12.
Business Personal Property	\$ 500,000	A.12.
Off-Premises Services Interruption	\$ 25,000	A.16.q.
Ordinance or Law	A - Incl. in Building Limit B & C - 25% of the Building Limit subject to \$200,000	A.11.i.
Outdoor Property	\$ 25,000	A.15.
Personal Effects and Property of Others	\$ 15,000	A.13.
Pollutant Clean Up and Removal	\$ 50,000	A.9.
Preservation of Property	90 days	A.7.
Property Off-Premises (Including while in Transit)	\$ 50,000	A.14.
Real Property of Others Required by Contract	\$ 25,000	A.4.
Reward (Not available in New York)	\$ 25,000	A.16.h.
Signs	\$ 25,000	B.
Special Deductible Provision	Included	C.
Undamaged Improvements & Betterments	Included	A.3. & D.1.
Waiver of Coinsurance on losses \$10,000 or less	Included	E.

A. The following changes apply to Section A. COVERAGE of the BUILDING AND PERSONAL PROPERTY COVERAGE FORM and the CONDOMINIUM ASSOCIATION COVERAGE FORM:

1. Broadened Premises

The within 100 feet of the described premises description stated in Paragraph A.1.a.(5)(b), Building, Paragraph A.1.b., Your Business Personal Property, Paragraph A.1.c.(2), Personal Property of Others and Paragraph A.5., Coverage Extensions is deleted and replaced by within 1000 feet of the described premises.

2. Additional Covered Property

The following are added to Item a. Building of Paragraph 1. Covered Property:

Bridges, roadways, walks, patios or other paved surfaces; Retaining walls (except retaining walls used to contain water) that are not part of a building.

Item d. is deleted from paragraph 2. Property Not Covered.

Item l. of paragraph 2., Property Not Covered is deleted and replaced by the following:

- l. Retaining walls used to contain water.

3. Undamaged Improvements and Betterments

(This coverage does not apply to the CONDOMINIUM ASSOCIATION COVERAGE FORM.)

The following is added to paragraph A.1.b Your Business Personal Property:

(8) Undamaged Improvements and Betterments;

(a) ~~Improvements and betterments coverage includes the portion of improvements and betterments not damaged in a covered loss.~~

(b) We will pay for the portion of undamaged improvements and betterments only if a minimum of six months is required to repair or rebuild the building for your occupancy, and only when your lease is cancelled:

(i) By the lessor;

(ii) By a valid condition of your lease; and

(iii) Due to direct physical loss or damage by a Covered Cause of Loss to property at

Exhibit A

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CE 9148 11 A9

Page 010

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

OREGON AMUSEMENTS, LLC, an Oregon limited
liability company,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE COMPANY, a
Massachusetts corporation,

Defendant.

Case No. 1307-09539
SUMMONS

TO: Corporation Service Company, Registered Agent for Liberty Mutual Insurance Company
285 Liberty Street NE
Salem, OR 97301

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To appear you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within thirty (30) days, along with the required filing fee. It must be in proper form and have proof of service upon the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions you should see an attorney immediately or you may call the Oregon State Bar Referral Service at (503)684-3763.

Jones Ammann LLC
880-Liberty St NE
Salem, OR 97301

Ken L. Ammann

Ken Ammann, OSB #88149
(503)364-6734

STATE OF OREGON)

COUNTY OF MARION)

ss:

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

Ken Ammann
Ken Ammann, OSB #88149

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Ken L. Ammann

Ken Ammann, OSB #88149
Attorney for Plaintiff

JONES AMMANN LLC
ATTORNEYS AT LAW
880 Liberty Street NE - Salem, OR 97301
Phone (503) 364-6734 - Fax (503) 364-6735



CORPORATION SERVICE COMPANY®

Notice of Service of Process

Transmittal Number: 11366180
Date Processed: 07/09/2013

Primary Contact: Bruce Buttaro
Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02117

Entity:	Liberty Mutual Insurance Company Entity ID Number 1765547
Entity Served:	Liberty Mutual Insurance Company
Title of Action:	Oregon Amusements, LLC vs. Liberty Mutual Insurance Company
Document(s) Type:	Summons/Complaint
Nature of Action:	Contract
Court/Agency:	Multnomah County Circuit Court, Oregon
Case/Reference No:	1307-09539
Jurisdiction Served:	Oregon
Date Served on CSC:	07/09/2013
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Ken L. Ammann 503-364-6734

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

OREGON AMUSEMENTS, LLC

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts corporation.

Defendants.)

Case No. 1307-09539

DEFENDANT LIBERTY MUTUAL
INSURANCE COMPANY'S RULE 21
MOTION

(Oral Argument Requested)

UTCR INFORMATION

The parties have conferred pursuant to UTCR 5.010. Oral argument of 15 minutes is requested. Court reporting services are not requested.

MOTIONS

Pursuant to ORCP 21, Defendant moves the Court for an Order:

- 1) Requiring plaintiff make the Complaint more definite and certain, pursuant to ORCP 21 D, by requiring the filing of an Amended Complaint consisting of "plain and concise statements" of the ultimate facts allegedly entitling plaintiff to prevail upon a specific legal theory and allegedly entitling plaintiff to recover specifically alleged damages, on the grounds that the Complaint is so indefinite and uncertain that the precise nature of the claim and the precise nature and amount of the claim of damages is not apparent.

PAGE 1 – DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY'S RULE 21 MOTION

1 2) Striking, pursuant to ORCP 21 E, from Paragraph 3 the allegations that
 2 "Defendant, through its authorized actual or apparent agents, including Tom
 3 Bauer of R. Bauer Insurance, Inc., contracted with plaintiff to provide it with an
 4 appropriate business policy of insurance, which included property theft protection
 5 coverage, and defendant accepted premium payments from plaintiff in return for
 6 representing that it would provide such insurance coverage, and defendant
 7 represented to plaintiff that it had done so and that such coverage was in full force
 8 and effect on June 9, 2012", on the grounds that these allegations are a sham,
 9 frivolous or irrelevant as there is no apparent claim in this case for failure to
 10 procure or provide the correct form of insurance coverage.

11 i. Alternatively, in the event motion no. 2 is denied then for an Order to
 12 make the Complaint more definite and certain by requiring plaintiff to
 13 allege the acts and/or omissions of "Tom Bauer of R. Bauer Insurance,
 14 Inc." any other "agent" upon which any claim is based and any alleged
 15 insufficiency of the policy of insurance that was issued.

16 3) Striking from Paragraph 3 the allegations that "defendant chose to underwrite
 17 through one of its many insurance group members, Ohio Security Insurance
 18 Company. Defendant directed plaintiff to make all premium payments for this
 19 insurance coverage payable to Liberty Northwest and plaintiff did so" on the
 20 grounds that these allegations are sham, frivolous or irrelevant to any claim
 21 alleged by the Complaint.

22 4) Striking Paragraph 4 in its entirety on the grounds that the purported summary of
 23 miscellaneous provisions of the alleged insurance policy recited therein are sham,
 24 frivolous or irrelevant to any claim alleged in this action.

25 i. Alternatively, in the event motion no. 4 is denied, then for an Order
 26 requiring the Complaint be made more definite and certain by pleading the

PAGE 2 – DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY’S RULE 21 MOTION

1 duty, breach of duty or damages to which each allegation contained in
2 Paragraph 4 is related.

3 5) Striking Paragraph 5 in its entirety on the grounds that the purported summary of
4 miscellaneous provisions of the alleged insurance policy recited therein are sham,
5 frivolous or irrelevant to any claim alleged in this action.

6 i. Alternatively, in the event motion no. 5 is denied, then for an Order
7 requiring the Complaint be made more definite and certain by pleading the
8 duty, breach of duty or damages to which each allegation contained in
9 Paragraph 5 is related.

10 6) Striking the second sentence and all subsequent allegations of Paragraph 6 on the
11 grounds that the detailed facts and conclusions alleged therein are sham, frivolous
12 or irrelevant to any claim alleged in this action.

13 i. Alternatively, in the event motion no. 6 is denied, then for an Order
14 requiring the Complaint be made more definite and certain by pleading the
15 duty, breach of duty or damages to which each allegation contained in
16 Paragraph 6 is related.

17 7) Striking from paragraph 6 lines 1-4 at page 5 of the Complaint on the grounds that
18 there no claim for tortious interference with Plaintiff's business is plead or for
19 which Defendant could be held liable for "financially ruining plaintiff", there are
20 no facts plead to support any such claims or damages and the allegations are
21 sham, frivolous or irrelevant.

22 8) Striking Paragraph 8 in its entirety and each allegation contained therein, on the
23 grounds that the miscellaneous and repetitive allegations contained therein are
24 sham, frivolous or irrelevant to any claim alleged in this action.
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PAGE 3 – DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY'S RULE 21 MOTION

1 i. Alternatively, in the event motion no. 8 is denied, then for an Order
 2 requiring the Complaint be made more definite and certain by pleading the
 3 exact relationship of each allegation to any claim in this case.

4 9) Striking paragraph 10 in its entirety and each allegation therein on the grounds
 5 that the damages plead therein are not recoverable in an action for breach of
 6 contract and facts supporting such claims of damage are not alleged.

7 i. Alternatively, in the event motion no. 9 is denied, then for an Order
 8 requiring the Complaint be made more definite and certain by requiring
 9 the pleading of the exact amount of past business losses and loss of profits
 10 claimed to have resulted from the breach of contract and facts
 11 demonstrating such damages to have been within the contemplation of the
 12 parties to the contract; and that the same be required for the pleading of
 13 "past and continuing loss of use of the stolen property in an amount to be
 14 determined."

15 POINTS AND AUTHORITIES

16 This appears to be a simple case in which Plaintiff must allege: (1) the existence of the
 17 specifically alleged and identified insurance policy no. BKS 54816782 between the parties; (2)
 18 the theft of the property that is specifically identified at paragraph 9 of the Complaint; (3) the
 19 nature and dollar amount of the policy benefit to which Plaintiff was allegedly entitled; (4) that
 20 Plaintiff satisfied all conditions precedent to receiving the benefits under the policy; and (5) that
 21 Defendant has not paid the full benefit allegedly due under the policy and to which Plaintiff is
 22 entitled by the terms of the policy.

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PAGE 4 – DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY’S RULE 21 MOTION

1 All of the additional allegations of the complaint are sham, frivolous and irrelevant and
2 should be stricken, as they obfuscate the exact nature of this action and attempt to interject issues
3 irrelevant to any well pled claim of relief.

4 DATED this 25 day of October, 2013. HITT HILLER MONFILS WILLIAMS LLP

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7 By: 

Danny L. Hitt, Jr., OSB# 833818
Of Attorneys for Defendants
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PAGE 5 – DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY’S RULE 21 MOTION

HITT HILLER MONFILS WILLIAMS LLP
411 SW SECOND AVENUE, SUITE 400
PORTLAND, OREGON 97204
(503) 228-8870

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DECLARATION OF SERVICE

I, Samantha Bashore, Paralegal, hereby declare under penalty of perjury that I served the foregoing: DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY'S RULE 21 MOTION on:

Ken L. Ammann
Jones Ammann LLC
880 Liberty Street NE
Salem, Oregon 97301

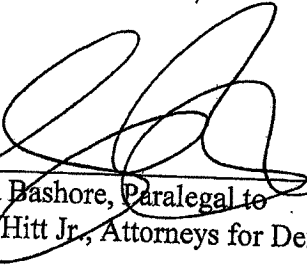
by the following indicated method(s):

☒ by **MAILING** a full, true and correct copy thereof in a sealed first-class postage prepaid envelope, addressed to the attorney are shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.

☐ by **FAXING** a full, true and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed.

☐ by causing a full, true, and correct copy thereof to be **HAND-DELIVERED** to the attorney at the attorney's last-known office address listed above on the date set forth below.

DATED: October 25, 2013


Samantha Bashore, Paralegal to
Danny L. Hitt Jr., Attorneys for Defendant

PAGE 1 - DECLARATION OF SERVICE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY
1024 SW Fourth Avenue Portland, Oregon 97204
(503) 988-3022 Option 3

October 29, 2013

DANNY L HITT
Attorney at Law
HITT HILLER MONFELS WILLIAMS
411 SW 2ND AVE STE 400
PORTLAND OR 97204

Bar#: 833818

RECEIVED

Oregon Amusements LLC/Liberty Mutual Insurance Co
Case#: 130709539 Civil Contract

303 31 2013
HITT HILLER MONFELS WILLIAMS LLP

NOTICE OF SCHEDULED COURT PROCEEDING

Scheduled Proceeding: **Hearing Case Management**
Date: 11/22/13
Time: 10:15AM
Room: 616 THE HONORABLE JERRY B HODSON
Additional Information:
INITIAL CASE MANAGEMENT
CONFERENCE

NOTICE OF SCHEDULED COURT PROCEEDING

At the Initial Case Management Conference the following will happen:
1. The appropriate track for this case will be decided (Regular Course with Mandatory Arbitration, Regular Course, Expedited Jury Trial, or Complex Case.)
2. A circuit court judge will be assigned to hear all pretrial motions in the action, other than summary judgments.
3. A date will be set for the Trial Readiness Conference which will be approximately 8 months from filing of the initial complaint in the action. A stipulated date may be set.

Each participating attorney must have authority to make "track" decisions and set dates for the Trial Readiness Conference.

If no appearance has been filed for a defendant, plaintiff's counsel is responsible for notifying all known opposing counsel of the hearing. Opposing counsel so notified appear without waiver of any defenses.

Parties may elect to appear by phone; the Plaintiff is responsible for setting up a conference call to the court if the parties agree to appear by telephone.

NOTE: Supplemental Local Rule (SLR) 7.011 establishes the Initial Case Management Conference. The SLR and information on procedural expectations for complying with this rule may be found on this link:

<http://courts.oregon.gov/Multnomah/> on the website go to the

"Civil" tab on the "General Information" page.

Cases for which there is no appearance will be subject to an ORCP 54 B (3) notice of intent to dismiss for want of prosecution - a 28 day notice with leave to cure.

Client(s) of Addressee:
LIBERTY MUTUAL INSURANCE COMPA

CC:
KENNETH L AMMANN

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

OREGON AMUSEMENTS, LLC,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts corporation,

Defendant.

Case No. 1307-09539

PLAINTIFF'S RESPONSE TO
DEFENDANT'S RULE 21 MOTIONS

Reply due 1/18

COMES NOW plaintiff, Oregon Amusements, LLC, by and through counsel, Ken L. Ammann of Jones Ammann LLC, and responds to Defendant's Rule 21 Motions as follows:

Each of defendant's motions should be denied at this time.

RESPONSE TO MOTION #1:

This Motion to make "the Complaint" in its entirety "more definite and certain" based upon defendant's assertion within its Motions that the Complaint does not provide enough information for defendant to determine the basic nature of plaintiff's claim for relief is without merit and should be denied. Defendant is well aware of its wrongful denial of payment of any amount of insurance policy proceeds to plaintiff for plaintiff's covered property theft loss, and defense counsel, while somewhat new to this case, must be aware of those facts having (presumably) received and reviewed the entire claims file

Page 1 - PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 21 MOTIONS

JONES AMMANN LLC
ATTORNEYS AT LAW
888 SW Fifth Avenue, Suite 1100 - Portland, OR 97204
Phone (503) 374-1414 - Fax (971) 925-9034

1 and (presumably) having received a verbal assignment of the case from the insurer
 2 defendant and having discussed the denial and investigation of the claim with defendant's
 3 adjustors and counsel. This contested matter has been exhaustively investigated by the
 4 defendant insurer via assigned adjustors and corporate counsel for well over 1 year. Any
 5 assertion here that this defendant is unaware of the nature of the claims asserted is
 6 implausible at best.

8 On its face, the Complaint itself clearly states sufficient ultimate facts alleging a
 9 claim for relief for breach of insurance contract – as is essentially admitted by defendant
 10 within its own Motion on page 4, lines 16 through 22, where defense counsel makes the
 11 judicial admission that defendant has obviously stated the theory of relief as breach of
 12 insurance contract and pled sufficient ultimate facts to state such a claim. Using
 13 defendant's own admission on page 4 of its Motion regarding what it believes must be
 14 stated, it is clear this Motion is a frivolous attempt to further wrongfully deny, or delay,
 15 payment of plaintiff's property loss claim.

18 Defendant represents that to have adequately pled a claim for breach of contract,
 19 plaintiff must, but according to Motion #1 have not, alleged "(1) the existence of a
 20 specific insurance policy." However, such facts are contained within plaintiff's
 21 complaint at paragraph 3, pages 1-2. The policy provisions specifically at issue as being
 22 breached by defendant are further and more specifically described in paragraphs 4 and 5
 23 on pages 2-3.

25 ///

28 Page 2 – PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 21 MOTIONS

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 Phone (503) 374-1414 – Fax (971) 925-9034

1 Similarly, defendant represents that plaintiff must, but according to its claims in
2 its first Motion, have not alleged (2) the theft of the property that is specifically identified
3 at paragraph 9 of the Complaint. However, contained within paragraph 6, on pages 3-4
4 of plaintiff's Complaint, are exactly those types of facts with additional detail – clearly
5 sufficient to notify defendant under Oregon's pleading standards of the nature of the
6 claims asserted.
7

8 The same analysis applies to the majority of defendant's argument that the nature
9 and dollar amount of the damages sought is insufficient. To the contrary, a detailed list
10 of the property at issue with dollar amounts is included in paragraph 9 on pages 6-7.
11 Plaintiff does concede that his business income loss claim, which is continuing, needs to
12 be made more definite and certain – but at a later date closer to the time of trial and
13 plaintiff will agree to amend that aspect of his Complaint at least 60 days prior to trial
14 and to continue to provide information related to that claim to defendant – as has been
15 done already during the course of the insurer's exhaustive investigation of this simple
16 theft loss claim.
17

18 Similarly, plaintiff's Complaint, at paragraphs 6 and 7, pages 4-5, states not only
19 that plaintiff has complied with all reasonable conditions preceding defendant's
20 obligation to pay pursuant to the policy – but provides more than a minimal description
21 of the demands made upon plaintiff by the insurer and the lengths plaintiff has gone to in
22 order to comply with those demands.
23
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28 Page 3 – PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 21 MOTIONS

JONES AMMANN LLC
ATTORNEYS AT LAW
888 SW Fifth Avenue, Suite 1100 – Portland, OR 97204
Phone (503) 374-1414 – Fax (971) 925-9034

1 As far a defendant's last element needed, as it states on page 4 of its Motions
2 (failure to pay), those facts are pled in paragraphs 6 and 8 specifically and generally
3 within paragraphs 10 and 11.
4

5 When the court looks at defendant's Motions, both individually and as a whole, it
6 is clear that defendant's position overall is inconsistent as it represents in its first Motion
7 that the Complaint does not state a claim because it is not detailed enough, yet defendant,
8 in later Motions, essentially argues that there is too much detail pled. Defendant cannot
9 have it both ways. The Complaint, both by caption and within the body, clearly states a
10 claim for breach of insurance contract. The Motion should be denied.
11

12
13 RESPONSE TO MOTION #2:

14 As the court is aware, pleadings do not go to the jury as a matter of course but are
15 instead summarized by the court, with the assistance of counsel, and then the summary is
16 read to the jury by the court. There is no reason to strike the language moved against.
17 The language simply states that defendant's authorized agent advertised, sold, and was
18 paid for theft loss property insurance and that this insurance was in effect at the time of
19 the theft. There is no current claim against the agent directly for failure to obtain the
20 correct type of coverage and one is not asserted in either the caption or the body of the
21 Complaint at this time. Therefore, there is no need to make any such incorrectly
22 perceived claim like that "more definite."
23
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28 Page 4 – PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 21 MOTIONS

JONES AMMANN LLC
ATTORNEYS AT LAW
888 SW Fifth Avenue, Suite 1100 – Portland, OR 97204
Phone (503) 374-1414 – Fax (971) 925-9034

1 RESPONSE TO MOTION #3:

2 This motion should be denied at this time. If defendant admits that the proper
3 party defendant is named, then plaintiff will agree to delete that language. The language
4 is included because while Liberty Northwest, the named defendant, conducted all the
5 investigation, and appears to have made the decision to deny this claim, that has not been
6 established and the paper trail regarding the various insurance entities involved in this
7 matter is unclear. Additionally, all the language in paragraph 3 is simply a neutral factual
8 statement and is properly included within the Complaint.
9
10

11
12 RESPONSE TO MOTION #4:

13 This motion should be denied because these policy provision obligations are
14 material to plaintiffs claim and provide defendant notice as to which aspects of the policy
15 were breached. Had this language not been included, defendant would have undoubtedly
16 filed only a motion seeking that the policy terms breached be specifically stated. Here
17 they assert both positions but do so by attempting to read the allegations in paragraph 4 in
18 isolation. The Complaint states the provisions breached in paragraph 4, and in
19 paragraphs 6 and 8 states how defendant breached its contractual obligations set out in
20 paragraph 5.
21
22

23
24 RESPONSE TO MOTION #5:

25 This motion should be denied for the same reasons as motion #4 above should be
26 denied.
27

28 Page 5 – PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 21 MOTIONS

JONES AMMANN LLC
ATTORNEYS AT LAW
888 SW Fifth Avenue, Suite 1100 – Portland, OR 97204
Phone (503) 374-1414 – Fax (971) 925-9034

1 RESPONSE TO MOTION #6:

2 This motion should be denied for the same reasons as Motions #4 and #5 above.
3

4
5 RESPONSE TO MOTION #7:

6 The purpose of this language is to place defendant on notice that its conduct has
7 caused and continues to cause plaintiff severe financial hardship and to the extent specific
8 economic damages result, those amounts will be claimed.
9

10
11 RESPONSE TO MOTION #8:

12 These allegations are properly stated and are material to and describe factually
13 defendant's breach of contract conduct which has included invasive, unreasonable
14 demands and continued delays as alleged here – all of which conduct is designed to force
15 plaintiff to forgo his claim – and which is in breach of defendant's implied contractual
16 duty of good faith and fair dealing. Plaintiff is entitled to plead and prove this aspect of
17 this breach of contract case. The motion should be denied.
18

19 DATED this 6th day of November, 2013.
20

21 JONES AMMANN LLC
22 *Ken L. Ammann*

23 Ken L. Ammann, OSB#88149
24 888 SW Fifth Avenue, Suite 1100
25 Portland, OR 97204
26 503-374-1414
27 Attorney for Plaintiff
28

Page 6 – PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 21 MOTIONS

JONES AMMANN LLC
ATTORNEYS AT LAW
888 SW Fifth Avenue, Suite 1100 – Portland, OR 97204
Phone (503) 374-1414 – Fax (971) 925-9034

CERTIFICATE OF MAILING

I hereby certify that I served a copy of the foregoing PLAINTIFF'S
RESPONSE TO DEFENDANT'S RULE 21 MOTIONS on the following:

Danny L. Hitt, Jr.
Attorney at Law
411 SW 2nd Avenue, Suite 400
Portland, OR 97204
Attorney for Defendant

By serving a correct copy thereof, certified as such, in the following
manner:

X mailing a certified true copy thereof in an envelope with first class
postage fully prepaid and deposited in the United States mail at Salem,
Oregon;

_____ facsimile transmission;

_____ electronic mailing;

_____ hand delivery.

DATED this 6th day of November, 2013.

Ken L. Ammann

Ken L. Ammann OSB#88149
888 SW Fifth Avenue, Suite 1100
Portland, OR 97204
(503)374-1414
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

OREGON AMUSEMENTS, LLC,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts corporation,

Defendant.

Case No. 1307-09539

NOTICE OF CHANGE OF CONTACT
INFORMATION OF COUNSEL FOR
PLAINTIFF

NOTICE IS HEREBY GIVEN that the contact information of counsel for plaintiff,

Ken L. Ammann of Jones Ammann LLC, has been changed to the following:

Ken L. Ammann, OSB #88149
Jones Ammann LLC
ken@ja-law.com
888 SW Fifth Avenue, Suite 1100
Portland, OR 97204
Office: (503) 374-1414
Fax: (971) 925-9034

DATED this 2nd day of December, 2013.

JONES AMMANN LLC

Ken L. Ammann

Ken L. Ammann OSB#88149
888 SW Fifth Avenue, Suite 1100
Portland, OR 97204
(503)374-1414
Attorney for Plaintiff

Page 1 – NOTICE OF CHANGE OF CONTACT INFORMATION OF COUNSEL FOR PLAINTIFF

JONES AMMANN LLC
ATTORNEYS AT LAW
888 SW Fifth Avenue, Suite 1100 – Portland, OR 97204
Phone (503) 374-1414 – Fax (971) 925-9034

CERTIFICATE OF MAILING

I hereby certify that I served a copy of the foregoing NOTICE OF
CHANGE OF CONTACT INFORMATION OF COUNSEL FOR PLAINTIFF on the
following:

Danny L. Hitt, Jr.
Attorney at Law
411 SW 2nd Avenue, Suite 400
Portland, OR 97204
Attorney for Defendant

By serving a correct copy thereof, certified as such, in the following
manner:

X mailing a certified true copy thereof in an envelope with first class
postage fully prepaid and deposited in the United States mail at Salem,
Oregon;

_____ facsimile transmission;

_____ electronic mailing;

_____ hand delivery.

DATED this 2nd day of December, 2013.

Ken L. Ammann

Ken L. Ammann, OSB#88149
888 SW Fifth Avenue, Suite 1100
Portland, OR 97204
(503)374-1414
Attorney for Plaintiff

IN E CIRCUIT COURT OF THE STATE OF OREGON
RECEIVED FOR MULTNOMAH COUNTY
MULTNOMAH COUNTY COURTHOUSE
1021 SW Fourth Avenue Portland, Oregon 97204

JAN 27 2014

HITT HILLER MONFILS WILLIAMS LLP

January 23, 2014

DANNY L HITT
Attorney at Law
HITT HILLER MONFILS WILLIAMS
411 SW 2ND AVE STE 400
PORTLAND OR 97204

Bar#: 833818

Oregon Amusements LLC/Liberty Mutual Insurance Co
Case#: 130709539 Civil Contract

NOTICE OF SCHEDULED COURT PROCEEDING

Scheduled Proceeding: **Hearing Further Proceedings**
Date: 3/05/14 ✓
Time: 8:30AM
Room: 616 THE HONORABLE JERRY B HODSON
Additional Information:
TRIAL READINESS CONFERENCE

At the Trial Readiness Conference (TRC): The parties-

1. -must provide the date they have selected for the trial of the action. The date selected must be within the standard set by UTCR 7.020(5), no later than one year from the date of filing. The Court will set this date as the trial date. If the parties are unable to agree on a trial date, the Court will assign a date for trial during the TRC; counsel attending must have authority to accept a trial date. The trial date set in the TRC can only be changed by the Presiding Judge and must be supported by a showing of exceptional circumstances.
2. -must be prepared to discuss the number of days they estimate will be needed for trial, the status of discovery, and any other matters which may affect the efficient trial of the case on the date set.
3. -may appear by phone. If multiple parties will appear by phone, the plaintiff is responsible for (a) calling the TRC judge with all other parties appearing by phone on the line; or (b) establishing a teleconference line for the parties and the judge to call to join the conference.

Client(s) of Addressee:
LIBERTY MUTUAL INSURANCE COMPA

CC:
KENNETH L AMMANN

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY
MULTNOMAH COUNTY COURTHOUSE
1021 SW FOURTH AVE PORTLAND OREGON 97204

INFORMATION

TRIAL READINESS CIVIL CASE MANAGEMENT CONFERENCE

A postponement of the Trial Readiness Civil Case Management Conference may be granted for good cause shown presented by a request, supported by a motion and declaration, at the Presiding Judge's ex parte.

The parties may appear by phone unless the court otherwise indicates.